



Supreme Court of the United States

October Term, 1978

No. 78-756

STATE OF OHIO,
Petitioner,

vs.

HERSCHEL ROBERTS,
Respondent.

RESPONSE TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

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The State of Ohio hereby respectfully objects to the entry of the Ohio Public Defenders Association as *amicus curiae* herein.

Rule 42(2) of the Rules of Practice provide that to appropriately enter a case as *amicus curiae*, a potential party must demonstrate (1) an interest in the case, (2) facts or questions which have not been presented by the parties or reasons for believing such facts or questions will not be adequately presented by the parties, and (3) the relevancy of such facts or questions to the disposition of the case.

While the Ohio Public Defenders Association may have an interest in this case, it cannot be said that the latter two requirements of Rule 42(3) have been met.

Respondent Herschel Roberts certainly has had no inadequate representation to date, as demonstrated by his

success in the Court of Appeals for Lake County and in the Ohio Supreme Court. The Public Defenders Association makes no suggestion that the same counsel who represented Roberts at trial and on appeal will not continue to raise facts and questions material to resolution of the issues presented in this case.

Indeed, although couched in different language, the issues presented and discussed by the Public Defenders Association in its brief are the same issues presented by respondent.

Therefore, because the Public Defenders Association has not complied with Rule 42(3) there is no need for this Court to burden itself with a brief which merely duplicates what has already been set forth by respondent, and this Court should deny the Ohio Public Defenders Association leave to file its proffered brief *amicus curiae*.

Respectfully submitted,

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